



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0116; FRL-9961-44-Region 4]

Air Plan Approval; Georgia: Heavy Duty Diesel Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to a State Implementation Plan (SIP) revision submitted by the State of Georgia on January 25, 2016, for the purpose of removing the requirements for heavy duty diesel engines (HDDE), which bar the sale/lease or import in the State of Georgia of any new HDDE that were not certified by the California Air Resources Board (CARB) to meet the emission standards of the California HDDE rules. The removal of this rule will prevent regulatory confusion and make it clear that the more stringent EPA emission standards for HDDE are applicable. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-

0116 at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222, Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The federal Clean Air Act (CAA) establishes the framework for controlling mobile-source emissions in the United States. During the development of the CAA in 1967, Congress

recognized that the imposition of many different state standards could result in inefficiencies in vehicle markets. Therefore, state-established emissions standards were preempted by federal emissions standards in what is now section 209 of the CAA. A special exemption to this federal preemption was made in section 209 for California because of the state's special air quality problems and pioneering efforts in the control of air pollutants. This exemption, still in existence, gives the State of California the authority to set on-road vehicle standards that differ from the federal standards as long as they are as protective in the aggregate as federal standards. Later amendments to section 209 granted California the authority to set emissions standards and regulations for some nonroad engines, and section 177 was added to allow other states to adopt California standards. *See* CAA section 209(b), 42 U.S.C. 7543(b). Section 177 of the CAA allows other states to adopt standards and test procedures identical to California's. However, regardless of whether a manufacturer receives CARB approval, all new motor vehicles and engines must still receive certification from EPA before the vehicle is introduced into commerce. If a state adopts CARB standards in lieu of the federal standards and then later removes the requirement for the CARB standards, the Federal CAA vehicle standards will apply in that state.

In 1994, the CARB approved a plan that called for emission standards for highway heavy-duty diesel vehicles beginning in 2004. In June of 1995, CARB, EPA, and the manufacturers of heavy-duty vehicle engines signed a statement of principles (SOP) calling for the harmonization of CARB and EPA heavy-duty vehicle regulations.

In 1998, the federal government and seven HDDE manufacturers entered into consent decrees as a result of enforcement actions that were brought against the manufacturers because a majority of the diesel engine manufacturers had programmed their engines to defeat federal test

procedures (FTP) through the use of a “defeat device.” As a part of the consent decree, the majority of the settling manufacturers agreed to produce by October 1, 2002, engines that would meet supplemental test procedures including the Not-To-Exceed (NTE) test and the EURO III European Stationary Cycle (ESC) test. These requirements were to be met for a period of two years.

Recognizing the effectiveness of the supplemental tests, EPA published a notice of proposed rulemaking on October 29, 1999, *see* 64 FR 58472, proposing to adopt the supplemental standards and test procedures for 2004 and subsequent model-year HDDEs. However, because of statutory and legal timing constraints, the NTE and ESC standards and test procedures were not to be required until the 2007 model year. Therefore, once the consent decree requirements would expire in 2004, diesel engine manufacturers would no longer be obligated to comply with the supplemental test procedures in 2005 and would be able to forgo the supplemental testing until the 2007 model year, when the federal rules came into effect. In anticipation of this regulatory gap, on December 8, 2000, California finalized a rule under section 1956.8 of the California Code of Regulations requiring HDDE manufacturers to perform the NTE and the ESC supplemental test procedures in addition to the existing FTP.

On October 6, 2000, EPA’s final rule on the *Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements* was issued. *See* 65 FR 59896. However, as explained above, it did not include the NTE standards for model years 2005 and 2006.

On December 28, 2001, Georgia submitted a SIP revision which contained Rule 391-3-1-.02(2)(ooo) “Heavy Duty Diesel Engine Requirements.” The Georgia Heavy-Duty Diesel

Engine Requirements Rule adopted and incorporated by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and subsequent model year heavy-duty diesel engines. The Rule required that any new on-road heavy-duty diesel vehicle or engine sold, leased, rented, imported or delivered in the state must have a CARB Executive Order (a vehicle certification issued by CARB to vehicle manufacturers). This requirement was also imposed on any new on-road heavy-duty diesel vehicle or engine leased, purchased, acquired, or received or offered for sale, lease or rent. The Heavy-Duty Diesel Engine Requirements Rule required any “person” who imports, sells, delivers, leases, or rents an engine or motor vehicle that is subject to the rule to retain records concerning the transaction for at least 3 years following the transaction and to submit annually a report documenting the total sales and /or leases of engines and motor vehicles for each engine family over the calendar year in Georgia. The requirement that new on-road heavy-duty diesel vehicles or engines must have a CARB Executive Order began with the 2005 model year. This rule incorporated the December 8, 2000, requirements of CARB for heavy duty diesel engines into the Georgia SIP for the purpose of avoiding possible “backsliding” in a former severe nonattainment area and potential significant increases in diesel exhaust emissions because of the lack of these procedures in federal regulations for the model years 2005 and 2006. EPA approved Georgia SIP revision on July 11, 2002. See 67 FR 45909.

Subsequently, EPA addressed the NTE standards for model years 2005 and 2006 by proposing a new rule on June 21, 2004, that included a two-phase NTE testing scheme for all pollutants. See 69 FR 34326. The final rule adopting these requirements for 2005 and newer model-year HDDE and heavy-duty on-highway vehicles was published in the Federal Register

on June 14, 2005. *See* 70 FR 34594. When EPA finalized its rule adopting test requirements for 2005 and newer models, the regulatory gap that prompted Georgia's adoption of the CARB standards was eliminated.

II. Analysis of State's Submittal

On January 25, 2016, Georgia submitted to EPA a SIP revision to remove from the SIP the version of Georgia Rule 391-3-1-.02(2)(ooo) – *Heavy Duty Diesel Requirements*, that was approved into the Georgia SIP on July 11, 2002. Georgia requested removal of the California standards approved into its SIP because the new federal standard requires the manufacturers to meet emission limits that are equivalent to the California standards. The Federal CAA standards for vehicles and fuel will replace the CARB standards and will, in the absence of the incorporated CARB standards, apply in Georgia. The removal of this rule will prevent regulatory confusion and will clarify that the more stringent EPA emission standards for HDDE are applicable. The removal of Georgia Rule 391-3-1-.02(2)(ooo) will not interfere with attainment or reasonable further progress, or any other applicable requirement of the Act because the federal standards are applicable.

III. Final Action

EPA is taking final action to approve the SIP revision submitted by Georgia on January 25, 2016, to remove Georgia Rule 391-3-1-.02(2)(ooo) Heavy Duty Diesel Engine Requirements

from the Georgia SIP. EPA has determined that Georgia's January 25, 2016, SIP revision is consistent with the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days after date of publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days after date of publication in the Federal Register].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days after date of publication in the Federal Register] and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state

law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which

a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2017.

V. Anne Heard

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

§ 52.570 [Amended]

2. Amend § 52.570(c) by removing the entry for “391-3-1-.02(2)(ooo).”

[FR Doc. 2017-09493 Filed: 5/11/2017 8:45 am; Publication Date: 5/12/2017]